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ATTORNEYS FOR DEFENDANTS

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

TRAFFICSCHOOL.COM, INC., A CALIFORNIA CORPORATION; DRIVERS ED DIRECT, LLC, A CALIFORNIA LIMITED LIABILITY COMPANY, PLAINTIFFS, VS. EDRIVER, INC.; ONLINE GURU, INC.; FIND MY SPECIALIST, INC., AND SERIOUSNET, INC., CALIFORNIA CORPORATIONS; RAVI K. LAHOTI, AN INDIVIDUAL; RAJ LAHOTI, AN INDIVIDUAL; AND DOES 1 THROUGH 10, DEFENDANTS.	CASE NO: CV 06-7561 PA (CWX) **DECLARATION OF MARK ALCOCK IN SUPPORT OF DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR CONTEMPT** DATE: FEBRUARY 2, 2009 TIME: 1:30 P.M. PLACE: COURTROOM OF THE HON. PERCY ANDERSON

I, Mark Alcock, declare as follows:

1. I have personal knowledge of the facts hereinafter stated and hereby testify competently as a witness in the above-captioned matter.

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BACKGROUND

2. I am a certified Forensic Examiner and Information Security Specialist for M2000/IS. M2000/IS is an information security consulting company and member of a Computer Incident Response and Investigation Team ("CIRI Team").

3. I am a co-author of the book "Overly on Electronic Evidence in California," 2005, 2006, 2007 and 2008 editions. I am presently appointed as a Forensic Examiner for the Superior Court of California for the Counties of Orange.

4. I have performed hundreds of computer/electronic-based forensic examinations, provided litigation support, expert reports and declarations and have served as an expert witness. I am a member of the FBI Infragard where I give lectures at the FBI crime summits on cyber threats and incidence response and give support to the FBI cyber squad. Concurrently, I spent 23 years in law enforcement; at present I am a retired Sergeant from the Long Beach Police Department where I provided services for information technology and cyber incidences and taught at the Long Beach Police Academy.

5. I hold the following certifications: Certified Forensic Examiner, Certified Electronic Evidence Specialist, Certified Electronic Crime Scene Investigator, Certified Network Engineer, P.O.S.T. Certified Police Officer, Microsoft Certified System Engineer, Certified Electronic Publishing Consultant, Intel Product Developer, and Certified Network Security Expert. I have professional affiliations with the American College of Forensic Examiners (ACFE), the International Association of Computer Investigative Specialists (IACIS), International Society of Forensic Computer Examiners (ISFCE) and I follow the guidelines and methodologies set forth by these entities.

6. As a forensic examiner, I have performed hundreds of computer/electronic based forensic examinations, many of which involved the analysis of code. Through this work, I have gained a broad base of knowledge that includes extensive experience analyzing web sites, web site source code, internet traffic, and client side technologies such as Flash and JavaScript.

ANALYSIS OF DMV.ORG, INJUNCTION, AND TRAFFICSCHOOL'S CONTEMPT MOTION

7. I have been asked by Foley & Lardner LLP to evaluate certain issues related to the injunction entered by this Court in *TrafficSchool.com v. Edriver*, CV 06-7561 PA (CWx).

8. I have been provided with a copy of this Court's injunction and have reviewed its terms. The injunction directs that visitors to DMV.ORG (the "Website") view a splash page prior to viewing any webpage content. The splash page must include the following language: "YOU ARE ABOUT TO ENTER A PRIVATELY OWNED WEBSITE THAT IS NOT OWNED OR OPERATED BY ANY STATE GOVERNMENT AGENCY. TO CONTINUE, CLICK 'CONTINUE BELOW.'"

9. I have been provided copies of and have reviewed TrafficSchool.com's ("TrafficSchool") Motion for Contempt and the supporting declarations of Eric Creditor, Daniel C. DeCarlo, Thomas Greenhaw V ("Mr. Greenhaw"), Mina Hamilton, Chris Kramer, and Benjamin P. Watson.

10. I have examined the Website's architecture, source code, and technology in detail. In particular, I have examined the Website's implementation of its splash page. The Website uses a combination of JavaScript and cookies to display the splash page.

11. In my experience, JavaScript and cookies are commonly used technologies on the internet.

THE WEBSITE'S SPLASH PAGE IS NEARLY 100% EFFECTIVE

12. Omniture Inc. is a third party company that licenses web analytics software. Omniture is a leader in its industry and is one of the five hundred fastest growing companies in America. Omniture software is an industry standard tool used for tracking website internet traffic and related statistics.

13. I have reviewed a report Scott Annett, Online Guru's Director of Analytics, prepared using tracking data pulled from Omniture. The report tracks visitors to the Website between December 1, 2008 through December 31, 2008 and classifies each

visitor by whether or not the users had cookies enabled or disabled and JavaScript enabled or disabled when they accessed the Website. Attached hereto as Exhibit 1 is a true and correct copy of the report prepared by Scott Annett.

14. The report indicated that during the month of December 2008, 97.37% of all visitors to the Website had both cookies turned ON and JavaScript ENABLED when they accessed the Website. The report also indicated that during the month of December 2008, 98.07% of all pages viewed on the Website were accessed by a visitor who had both cookies turned ON and JavaScript ENABLED. Attached hereto as Exhibit 2 is a true and correct copy of a chart created by Scott Annett summarizing and highlighting these facts.

15. While plaintiff's expert, Mr. Greenhaw, indicated in his declaration that a "significant number of users" disable JavaScript or cookies, this generalized information is not based on data gathered from Omniture and is not reflective of the users of DMV.ORG. The tracking data from Omniture shows that even if Mr. Greenhaw's assertion is true of users as a whole, that over 97% of the individuals who visit the Website have both cookies turned on and JavaScript enabled.

LITERAL COMPLIANCE WITH THE SUBPOENA IS IMPOSSIBLE

16. In my professional opinion, based upon my training and experience, I know of no method or means by which a company operating a website such as DMV.ORG could design a splash page that complied 100% of the time with the literal terms of the injunction by displaying a splash page to "every" single visitor to the Website. In my opinion, based on my training and experience, no splash page can absolutely guarantee that every visitor to the Website views the splash page no matter what browser, cell phone, or device the visitor was using, or what programs they had enabled or disabled on their computer, cell phone, or device. The internet is so global and complex and device and browser technology advance so rapidly that the number of variables involved in designing a splash page ensure that no solution could guarantee 100% penetration.

17. Although no solution can guarantee 100% penetration, the Website's use of

Java and cookies to display the splash page comes remarkably close. Over 97 % percent of all the visitors to the Website have the capability to view the splash page before entering. Based on my experience in analyzing internet solutions and my roles in investigations, the less than 3 percent of users who do not view the splash page is not statistically significant as a 2-4 percent deviation is an acceptable and typical error ratio, which the Website falls well within.

18. Furthermore, contrary to Mr. Greenhaw's assertion, the option proposed by Mr. Greenhaw would not guarantee that "every" single visitor to the Website would view a splash page. As I discussed above, no solution can guarantee 100% penetration. Moreover, any gains that would be made from Mr. Greenhaw's solution would not be statistically significant over the current splash page's efficacy, and could risk damaging the Website's functionality.

THE CURRENT WEBSITE AND SPLASH PAGE ARE AN EFFECTIVE SOLUTION

19. In addition to the splash page, the Website contains a number of redundant features that alert visitors that the Website is privately owned and is not owned or operated by any state or government agency:

a. Each of the Website's pages display a prominent colored banner at the top of the page which states "DMV.ORG is a **privately owned website** that is **not** owned or operated by any government agency." This banner is displayed on **every page** and is visible to **every visitor** who enters the Website even if they do not have JavaScript or cookies enabled because it is part of the site's HTML code. Attached hereto as Exhibit 24 are true and correct copies of screenshots of DMV.ORG displaying the banner;

b. Each of the Website's pages displays a disclaimer at the bottom which states "***Please note that DMV.ORG is not owned, operated, or affiliated with any government agency.*** DMV.ORG (the Site) is a privately owned, for-profit web site owned by OnlineGURU, Inc. The Site specifically

disclaims any and all connection with any state bureau, division, or Department of Motor Vehicles, or any state or federal government agency." This disclaimer is displayed on **every page** and is visible to **every visitor** who enters the Website even if they do not have JavaScript or cookies enabled because it is part of the site's HTML code. Attached hereto as Exhibit 25 is a true and copy of a screenshot of DMV.ORG displaying the disclaimer.

c. DMV.ORG's license plate logo which contains the term "Unofficial Guide to the DMV" appears at the top of every page. This logo with its text of "Unofficial Guide to the DMV" is displayed on **every page** and is visible to **every visitor** who enters the Website even if they do not have JavaScript or cookies enabled because the program is part of the site's HTML code.

d. Visitors to DMV.ORG who send a communication to the Website must click through an affirmative acknowledgement checkbox that states "DMV.ORG is a **privately owned website** that is **not** owned or operated by any government agency." Attached hereto as Exhibit 26 are true and correct copies of screenshots displaying the acknowledgement click through.

20. In my professional opinion, based upon my training and experience, even if a visitor to the Website did not view or read the text on the splash page it would be nearly impossible for them not to realize that the Website is privately owned and is not affiliated with any government agencies because of the headers, disclaimers, logos, and other redundancies on the site.

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21. In my professional opinion, based upon my experience and training, the disclaimers on the Website standing alone would be sufficient to alert visitors to the Website that it is privately owned and not affiliated with any government agency. When combined with the splash page these disclaimers practically ensure that visitors to the Website will not be misled.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I executed this declaration on January __, 2009 in San Diego, California.

Mark Alcock

Exhibit 1

Cookies	JavaScript	JavaScript Versions	Unique Visitors	Page Views	
N		0 no javascript		724	1479
N		4	1.3	42	151
N		5	1.4	6	18
N		6	1.5	3129	13117
N		7	1.6	278	918
N		8	1.7	1154	4291
U		0 no javascript		33379	135662
U		6	1.5	2	3
U		8	1.7	1	3
Y		0 no javascript		44293	87376
Y		1	1	1	1
Y		4	1.3	531	1660
Y		5	1.4	475	1996
Y		6	1.5	2335105	9554032
Y		7	1.6	175689	652764
Y		8	1.7	558631	2138926

Exhibit 2

December 2008 Data[1]

Cookies	JavaScript	JavaScript Version	Unique Visitors	UV %	Page Views	PV %
N	NO	no javascript	724	0.02%	1,479	0.01%
N	YES	1.3	42	0.00%	151	0.00%
N	YES	1.4	6	0.00%	18	0.00%
N	YES	1.5	3,129	0.10%	13,117	0.10%
N	YES	1.6	278	0.01%	918	0.01%
N	YES	1.7	1,154	0.04%	4,291	0.03%
Y	NO	no javascript	33,379	1.06%	135,662	1.08%
Y	NO	no javascript	44,293	1.40%	87,376	0.69%
Y	*YES*	*1.0*	*1*	*0.00%*	*1*	*0.00%*
Y	*YES*	*1.3*	*531*	*0.02%*	*1,660*	*0.01%*
Y	*YES*	*1.4*	*475*	*0.02%*	*1,996*	*0.02%*
Y	*YES*	*1.5*	*2*	*0.00%*	*3*	*0.00%*
Y	*YES*	*1.5*	*2,335,105*	*74.05%*	*9,554,032*	*75.87%*
Y	*YES*	*1.6*	*175,689*	*5.57%*	*652,764*	*5.18%*
Y	*YES*	*1.7*	*1*	*0.00%*	*3*	*0.00%*
Y	*YES*	*1.7*	*558,631*	*17.71%*	*2,138,926*	*16.99%*

Segmentation Analysis Summary

Cookies: N, JavaScript: N	[illegible]	0.02%	[illegible]	0.01%
Cookies: N, JavaScript: Y	[illegible]	0.15%	[illegible]	0.15%
Cookies: Y, JavaScript: N	[illegible]	2.46%	[illegible]	1.77%
Cookies: Y, JavaScript: Y	*3,070,435*	*97.37%*	*12,349,365*	*98.07%*
	3,153,440	[illegible]	12,592,397	[illegible]

[1] Omniture SiteCatalyst

COMPANY CONFIDENTIAL - DO NOT DISTRIBUTE

Exhibit 24

DMV.ORG - DMV Guide - The Unofficial Guide to the DMV - Microsoft Internet Explorer provided by Foley
File Edit View Favorites Tools Help
Back Search Favorites
Address http://www.dmv.org/
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Enter Keywords...
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Insurance Center
Tickets & Driving Schools
Reports & Records
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• Drivers License & ID
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• Lawyers
• Locations & Hours
• Practice Tests
• Traffic Schools
• Vehicle & Tire Recalls
• Vehicle History Report
• Vehicle Registration
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Click on the map to select your state
Alaska
Hawaii
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• Drivers License & ID
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We can save you a trip or a call to the DMV
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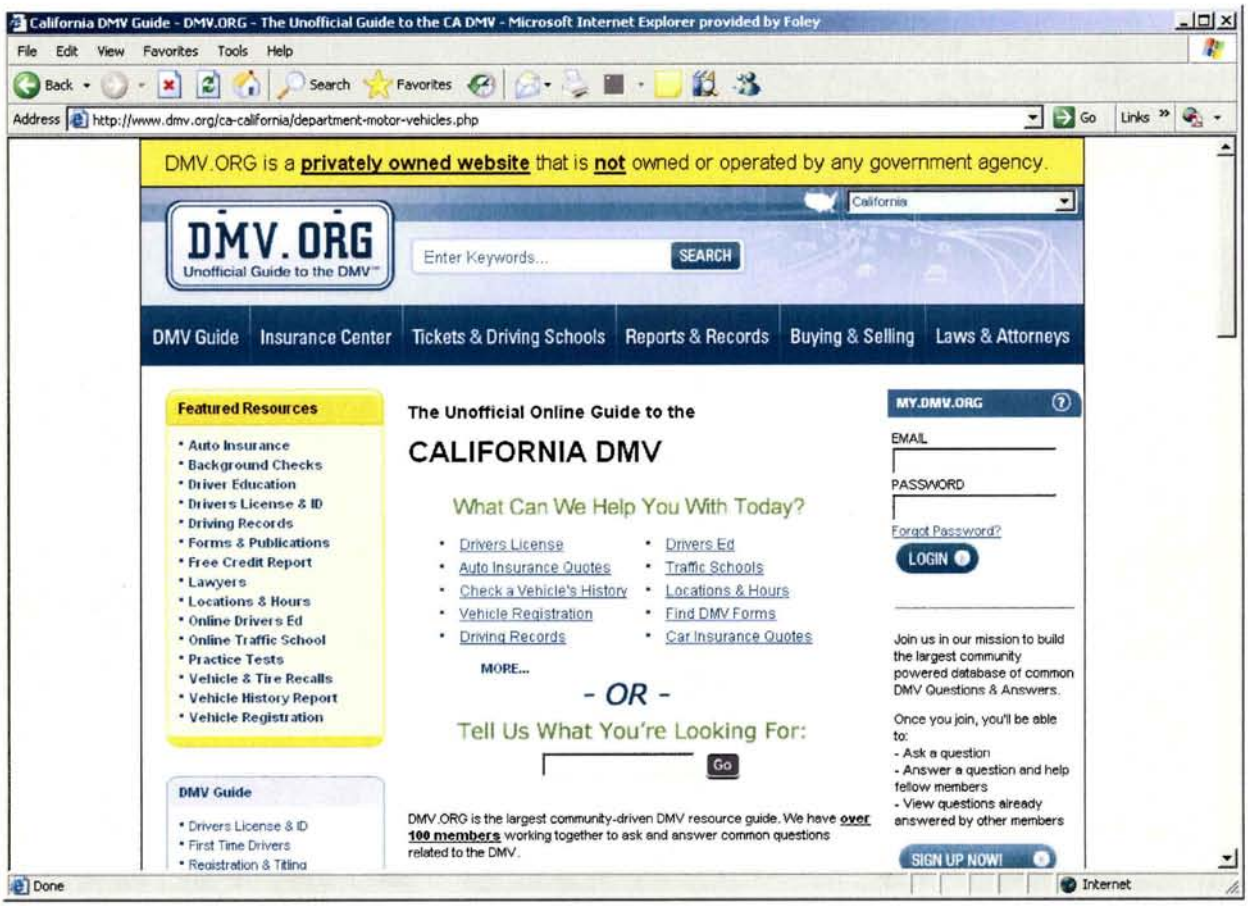
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* Driving Records
* Forms & Publications
* Free Credit Report
* Lawyers
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* Online Drivers Ed
* Online Traffic School
* Practice Tests
* Vehicle & Tire Recalls
* Vehicle History Report
* Vehicle Registration
DMV Guide
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* First Time Drivers
* Registration & Titling
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CALIFORNIA DMV
What Can We Help You With Today?
Drivers License
Auto Insurance Quotes
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MORE...
- OR -
Tell Us What You're Looking For:
Go
DMV.ORG is the largest community-driven DMV resource guide. We have over 100 members working together to ask and answer common questions related to the DMV.
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EMAIL
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Forgot Password?
LOGIN
Join us in our mission to build the largest community powered database of common DMV Questions & Answers.
Once you join, you'll be able to:
- Ask a question
- Answer a question and help fellow members
- View questions already answered by other members
SIGN UP NOW!
Done
Internet

Exhibit 25

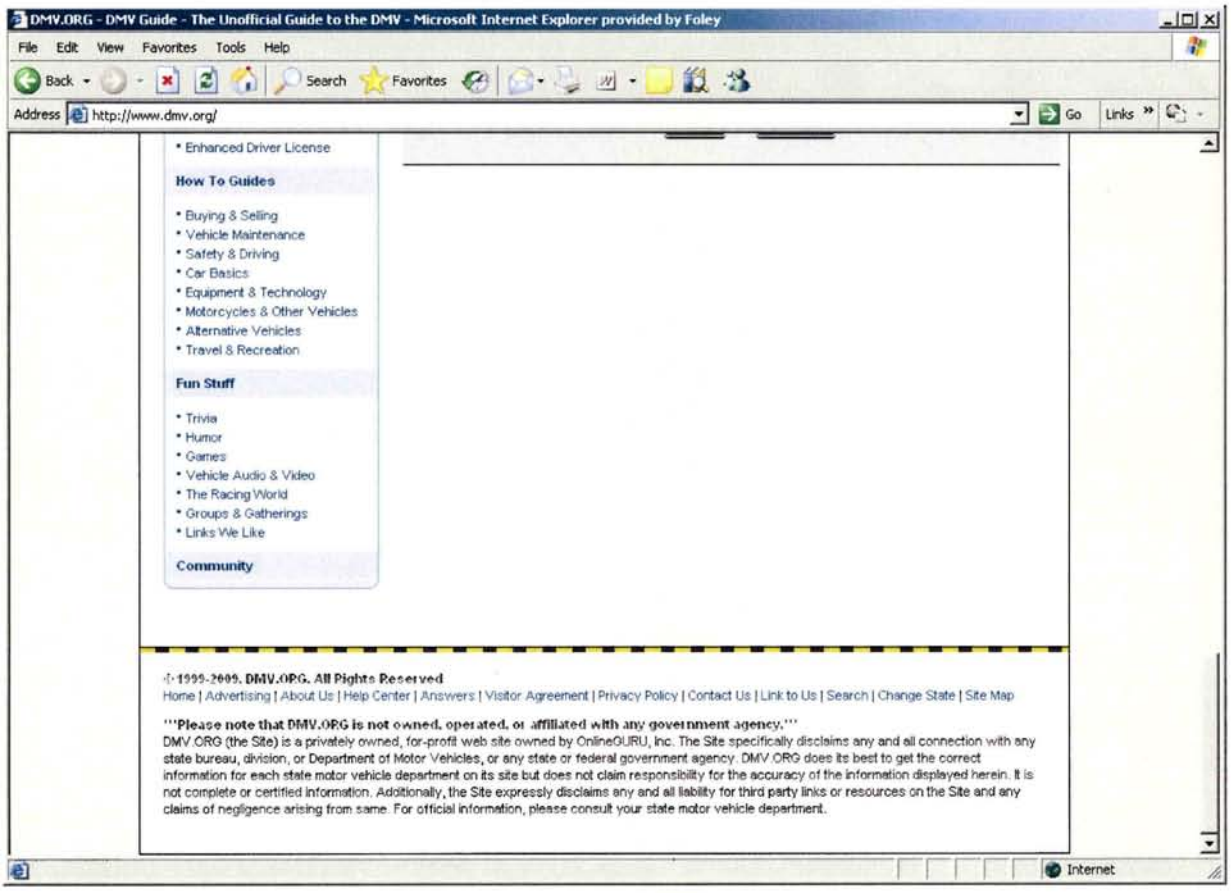
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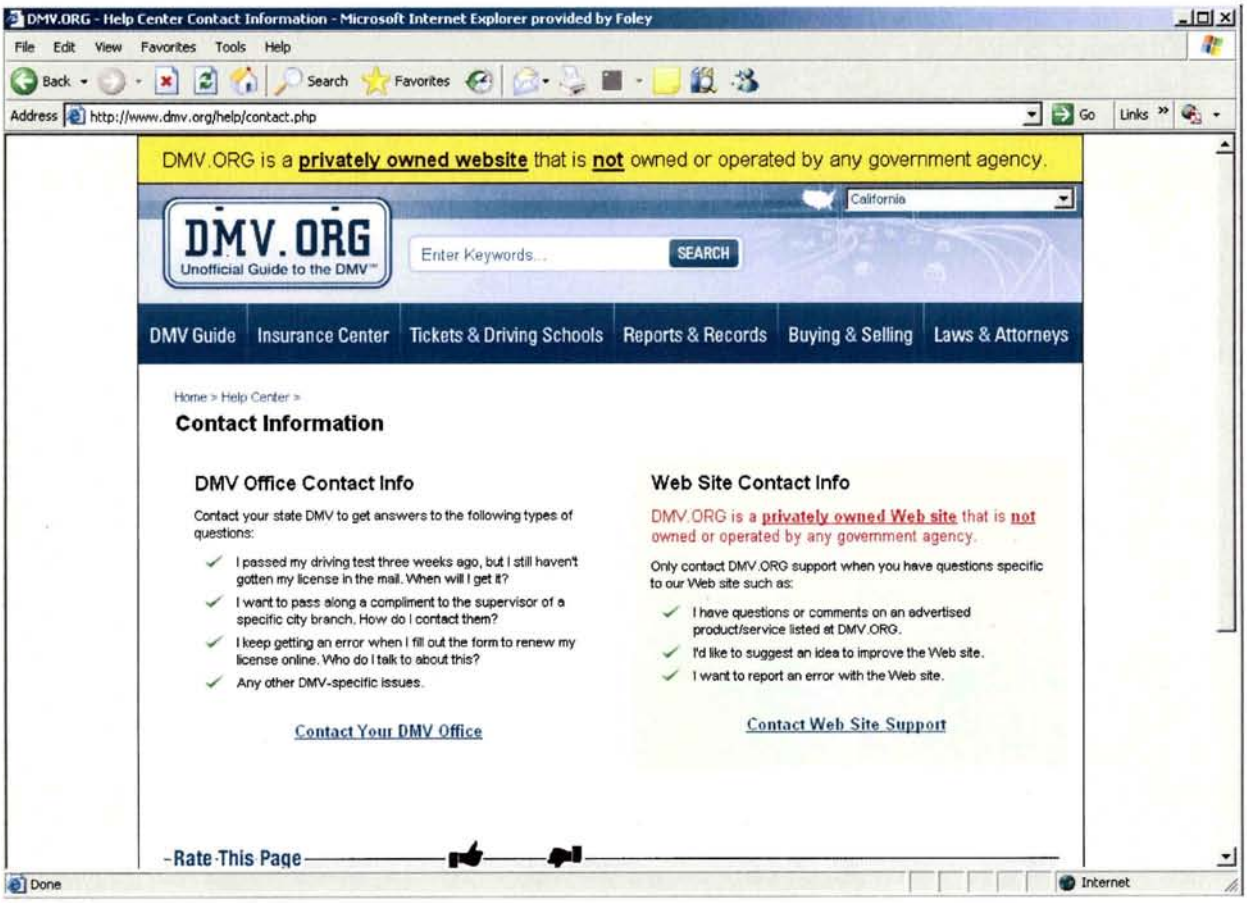
Exhibit 26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Insurance Center
Tickets & Driving Schools
Reports & Records
Buying & Selling
Laws & Attorneys
Home > Help Center >
Contact Information
DMV Office Contact Info
Contact your state DMV to get answers to the following types of questions:
I passed my driving test three weeks ago, but I still haven't gotten my license in the mail. When will I get it?
I want to pass along a compliment to the supervisor of a specific city branch. How do I contact them?
I keep getting an error when I fill out the form to renew my license online. Who do I talk to about this?
Any other DMV-specific issues.
Contact Your DMV Office
Web Site Contact Info
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Only contact DMV.ORG support when you have questions specific to our Web site such as:
I have questions or comments on an advertised product/service listed at DMV.ORG.
I'd like to suggest an idea to improve the Web site.
I want to report an error with the Web site.
Contact Web Site Support
Rate This Page
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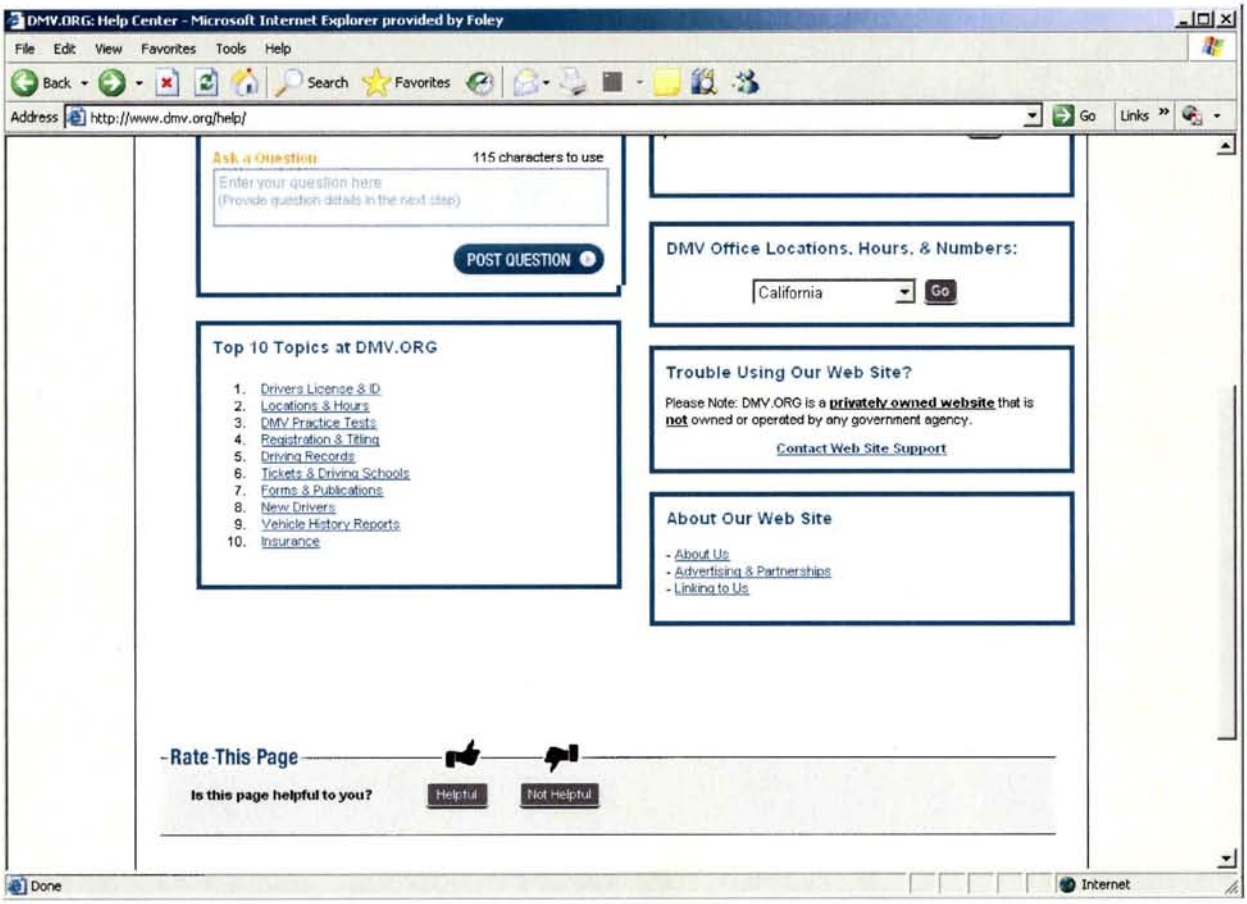
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Ask a Question
115 characters to use
Enter your question here
(Provide question details in the next step)
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Done
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